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**Before the
Federal Communications Commission
Washington, D.C. 20554**

~~FCC MAIL ROOM~~

In the Matter of

Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service

WT Docket No. 98-169
RM-8951

Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services

WT Docket No. 95-47
RM-8476
(proceeding terminated)

References: Notice of Proposed Rule Making adopted September 15, 1998: RM-8951

I. INTRODUCTION

1. Eagle Interactive Partner, Inc.(EIP) submits the following reply comments regarding the subject Notice of Proposed Rule Making, Amendment to Part 95 of the Commissions Rules to provide regulatory flexibility in the 218-219 MHz service. EIP is an auction winner and was granted licenses in fifteen (15) MSA's in Georgia, Alabama, Tennessee, Kentucky, So Carolina and Mississippi.

These reply comments support changes in the rules concerning operational and technical characteristics, license term and spectrum aggregation, as well as supporting a suggestion concerning grace period made in the Comments of ITV, Inc. and IVDS Affiliates LLC.

II. OPERATIONAL AND TECHNICAL CHARACTERISTICS

2. Several comments¹ dealt with changes in technical characteristics. EIP supports the principle of increasing flexibility to licensees by relaxing unneeded limitations on technical

¹ See Comments of ITV, Inc. and IVDS Affiliates (ITV-IALC), Concepts To Operations, Inc. (Concepts) and Radio Telecom and Technology, Inc. (RTT).

characteristics. Each of these commenters pointed out ways to limit interference to adjacent TV Channel 13 receivers. This flexibility can be afforded to licensees by allowing the use of any of a number of interference reduction techniques that were suggested. These include tradeoffs between the various parameters such as power, antenna height, duty cycle, timing with respect to Channel 13 blanking intervals, distance to an over the air TV receiver, automatic power control, filters, etc. By appropriate use of these interference control mechanisms the licensee should be able to eliminate any interference effects. Many commentors suggested complete removal of technical and operational limitations. EIP believes Wholeheartedly with this recommendation. The licensee should still be required to comply with Section 95.861 concerning resolving interference problems to broadcast operations. This rule in conjunction with the proper use of interference control mechanisms available is sufficient to protect broadcast operations.

3. The use of one-way communications in either the central terminal to the remote terminal direction or the reverse direction, would increase flexibility for the licensee and should be adopted.

III. LICENSE TERM

4. The Commission has received several petition and waiver requests concerning the rules. In most cases, as several commentors noted, the Commission's responses to these requests were very slow, taking several years before final rule changes were adopted. Because of this, licensees were unable to make a sound business decision on the type of services to be offered and the technology they should use to provide the services. For example, the Memorandum Opinion and Order in the Mobile Services Matter was issued as part of the subject matter and terminated the mobility proceeding. It has been four years since the petition on mobility was submitted.

5. Because of this situation, the Commission should extend the license term to ten (10) years instead of the existing five (5) year term for all auction winners.

6. With regard to extending the license term, the NPRM at 35 notes that the petitioners, among other things, asked to consider re-amortizing the installment by "... or (iii) payment through a royalty-based schedule as an alternative to auction payments.¹³⁷" Footnote 137 concludes with the statement *"Specifically, the Commission states, inter alia, that a royalty program would require adoption of complex, intrusive accounting rules for identifying the share of a firm's revenues that is attributable to a particular license, and send an erroneous message to bidders that the government (taxpayers) is better able to bear risk than the firm (shareholders). Furthermore, the Commission said that a royalty program making government revenues dependent on the success of a regulated service may give rise to conflicts of interest."*

Yet at its meeting of November 19, 1998, the Commission² will require television broadcasters to pay the Government five (5) percent of any revenue that they derive from selling digital-TV programs or services based on subscriptions fees or other specified compensation. This constitutes a royalty program to, in part, counter the fact that additional spectrum was awarded to the broadcasters for digital-TV without any auction or other means of paying for the spectrum. The royalties paid by broadcasters "will not have to commence paying a fee until they begin to collect revenues from covered services, and therefore minimizes detrimental effect the fee might have on the development of new and innovative services."

7. This approach to minimize fees for well established broadcasters is in stark contrast to that taken by the Commission regarding licensees (mainly small businesses) in the 218-219 MHz service. These licensees must develop new innovative services and pay down payments and installment payments prior to obtaining any revenue or even partially amortizing their investment. Shouldn't they be given treatment comparable to that given the broadcasters?.

²

MM Docket 97-247; FCC 98-303. Report No. MM 98-16, November 19, 1998.

IV. SPECTRUM AGGREGATION

8. The Commission originally based its decision to have two licensees for IVDS in the 218-219 MHz band with 500 kHz to be granted to each licensee in a market. The purpose of this arrangement was to foster competition in providing interactive television and data services. Since that time, it has been pointed out by several commentators, the demand for such services has not materialized. The Commission now proposes to allow a wider range of services in the band. Many of the possible services can also be accommodated in other bands with considerably greater available bandwidth. Thus, considerable competition can exist and a licensee with only a 500 kHz bandwidth cannot be a serious competitor to operations in different bands with larger available bandwidth. The Commission should therefore allow aggregation of the A&B segments and perhaps allow aggregation with services in other bands. This can foster a greater degree of competition.

V. GRACE PERIOD

9. The suggestion made by ITV-IALC³ (page 7, last paragraph), that the Commission, on its own motion, adopt a grace period for all IVDS auction winners and not just those who have filed grace period requests makes considerable sense. The comments of Bay Area 218-219 MHz Group⁴ on page 5 & 6 provide another viable way of correcting FCC inactions. They suggest that the Commission offer complete Amnesty to all licensees that made any down payment. The inability

³ Comment of ITV-IALC.

⁴ Comments of the Bay Area 218-219 MHz Group.

of the licensees to proceed because of rule uncertainties⁵ and the complete confusion regarding payment schedules^{6, 7, 8} have prevented the licensees from making any valid business plans.

10. EIP was thwarted in its planning for building and operating its licenses because of the delays by the Commission in revising the rules. EIP also experienced an inability on the part of the Commission's Billing and Collection Office to provide any pertinent information or guidance in regard to payment time tables (not to mention the inaccuracies in the information that was provided). Letters and phone calls to the Billing and Collection Office were unanswered. The only "real" information from the billing office has been ① "... you will receive a letter from the Treasury Department regarding payment schedules" (7-3-96), and ② "... all accounts are due and payable in December of 1999" (3-29-96). It should also be noted that licensees not filing a grace period request were not notified that they had defaulted nor were their licenses included in the published list of defaulted MSA to be auctioned in February 1997. This list was compiled after the "supposed default" date had passed. It would appear that the Commission staff was not certain of the default rules. Can the Commission expect the licensees to have a better understanding than the staff?

11. EIP urges the Commission to follow the ITV-IALC suggestion, by applying this suggestion to all IVDS auction winners that were granted licenses rather than allowing it to apply to auction winners who defaulted prior to payment of the ten percent down payment.

VI. SUMMARY

⁵ RTT comments at 5.

⁶ Concepts comments at 14.

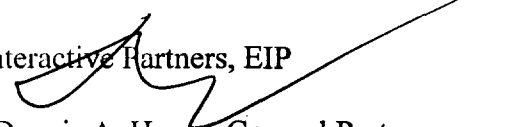
⁷ Comments of IVDS/RLV, LLC and Friend of IVDS LLC.

⁸ Comments of MKS Interactive, Inc. at 15.

12. EIP supports the greater flexibility that has been proposed by the Commission and urges adoption of rules that will allow such flexibility including the extension of the grace period as discussed in the above paragraphs.

Respectfully submitted,

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